

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY  
MINUTES OF A PUBLIC HEARING**

DATE..... July 23, 2003  
TIME..... 7:00 P.M.  
PLACE..... CO. OFFICE BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE IN 47901

**MEMBERS PRESENT**

Ralph Webb  
Mark Hermodson  
Jean Hall  
Steve Clevenger  
Gary Schroeder  
Bruce Junius

**MEMBERS ABSENT**

Edward Weast

**STAFF PRESENT**

Sallie Fahey  
Margy Deverall  
Heather Prough  
Jay Seeger, Atty.  
Michelle D'Andrea

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 23<sup>rd</sup> day of July 2003, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Mark Hermodson called the meeting to order.

**I. APPROVAL OF MINUTES**

Ralph Webb moved to approve the minutes of the June 25, 2003 public hearing and Bruce Junius seconded.

Ralph pointed out that there was a typographical error on page one.

The motion carried by voice vote.

**II. NEW BUSINESS**

Sallie Fahey informed the Board that **BZA – 1640 REGINALD & LAURA ROY** requested a continuance to the September 24, 2003 meeting in order to have time to work with the Highway Department. She stated that **BZA – 1643 BROTHERS OF WEST LAFAYETTE, INC** might have to be continued if the proofs of publication could not be found by the end of the meeting.

**III. PUBLIC HEARING**

Ralph Webb moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the application to be heard this evening and responses from the checkpoint agencies. Bruce Junius seconded and the motion carried by voice vote.

Mark Hermodson waived the reading of the meeting procedures because all those in the audience were familiar with the public hearing procedures.

Ralph Webb moved to continue **BZA – 1640 REGINALD & LAURA ROY** to the September 24, 2003 Area Board of Zoning Appeals meeting. Bruce Junius seconded and the motion carried by voice vote.

1. **BZA-1642—HAWKINS OUTDOOR:** Petitioner is seeking a variance to allow an outdoor advertising sign (billboard) to be constructed in the GB zone 228' from a residential zone instead of the required 300', on Rhino Linings of Lafayette property between the building and Wildcat Creek in Fairfield 10(SE)23-4. (UZO 4-8-10(b)).

Ralph Webb moved to hear and vote on the above-described request. Bruce Junius seconded the motion.

Sallie Fahey presented slides of the zoning map, 2 aerials, revised site plan, sign elevation and 6 photographs. She read the staff report with recommendation of denial.

Joseph T. Bumbleburg, PO Box 1535, Lafayette, IN, presented 6 additional pictures and explained the view in each. He stated that the zone line changes many times between Sagamore Parkway and this site. He listed all the different zones in this area. He said that according to the staff this site has 3 different zones. He suggested that the trend for this area is to treat it as a commercial area and what little residential is left is on its way out. He stated that this request would not injure the public health, safety or general welfare of the area. He listed the other commercial uses in the area. He pointed out that this request is for a sign, which will not make any noise and will not bother any resident. He mentioned that this sign will not annoy anyone and is against the creek. He asked for approval.

Mark Hermodson asked for clarification of the zones on the map.

Sallie Fahey replied that they were General Business zones.

Mark Hermodson questioned the number and location of other billboards on this intersection.

Joseph T. Bumbleburg stated that there used to be one billboard in the floodplain at the intersection of I-65 and SR-26. He pointed out the location on the map and explained that it was in conflict with this request and taken down. He said that there were no other signs at this intersection.

Jean Hall questioned the location of the archery sign.

Sallie Fahey explained that the sign Jean Hall was referring to was an on premise sign and not a billboard.

Joseph T. Bumbleburg said that the sign Sallie Fahey was referring to, was not within the 1000-foot perimeter.

Ralph Webb questioned whether there was word from either of the homeowners.

Sallie Fahey stated that there was no word from them.

Ralph Webb questioned the location of this request and why it was not in the flood plain.

Sallie Fahey stated that the sign would not be permitted at all in the flood plain.

Mark Hermodson stated that this Board could not vary it in the flood plain.

Jean Hall questioned whether the flood plain could be filled in and used.

Jay Seeger explained that if the flood plain were filled in it would also have to be rezoned.

Mark Hermodson said that if a flood plain is filled in it automatically assumes the zone of the adjoining land.

Sallie Fahey stated that if a flood plain is filled up to another zone, it takes on that zone. She explained that if an island is filled in a flood plain it defaults to AW.

Jean Hall commented that there was a lot of filling going on in this area.

Sallie Fahey stated that was correct.

The Board voted by ballot 4 to grant –2 to deny thus granting **BZA-1642—HAWKINS OUTDOOR.**

**Yes votes**

Gary Schroeder  
Jean Hall  
Steve Clevenger  
Ralph Webb

**No Votes**

Bruce Junius  
Mark Hermodson

2. **BZA-1643—BROTHERS OF WEST LAFAYETTE:** Petitioners are seeking a sign variance to allow 212 sq. ft. of signage instead of the maximum permitted 52 sq ft. for a bar and grill located in the Village at 306 W State Street, West Lafayette, Wabash 19(NE)23-4 (UZO 4-8-5)

Mark Hermodson asked whether this case was ready to be heard.

Marc Fortney, PO Box 1621, La Crosse, WI, stated that they have not received any mail at the address listed on the petition since they normally use a PO Box in Wisconsin. He asked if there could be any consideration in dealing with the exception of the proofs of publication since it was sent in through the City. He explained that they had traveled from Wisconsin to be at this hearing. He asked if the case could be heard and the proofs of publication be presented tomorrow.

Jay Seeger stated that it was an absolute prerequisite that the proofs of publication be filed by the time the case is heard. He said that the only alternative is to continue the case.

Marc Fortney stated that they were certain that it was published because it was submitted with all the other cases.

Jay Seeger stated that they were bound by having the actual proof of publication, which is a certification from the newspaper. He explained that this is not the first time that this has happened and the only outcome is to continue the case. He said that there is not any provision in the By-laws to allow the filings to be done after the hearing.

Marc Fortney explained that the other issue is that the mason, who has traveled from Iowa City, is ready to move on to this stage of the work. He stated that waiting until August 27, 2003 would not be possible for the mason due to his traveling schedule. He mentioned that if the case were continued there would be no reason to meet on August 27.

Jay Seeger stated that there was no way to make an exception.

Ralph Webb moved to continue **BZA 1643 – BROTHERS OF WEST LAFAYETTE, INC** to the August 27, 2003 Area Board of Zoning Appeals meeting. Bruce Junius seconded and the motion carried by voice vote.

3. **BZA-1644—GREGORY A. JACOBS:** Petitioners are seeking a variance to allow the width of a "Type C" bufferyard between GB and R1 zones to vary from the required 20' at its widest to 12.5' at its narrowest for a proposed carwash, on property located at 3005 SR 25 N. Fairfield 2(SW) 23-4. WITH CONDITION.

Ralph Webb moved to hear and vote on the above-described request. Bruce Junius seconded the motion.

Sallie Fahey presented slides of the zoning map, aerial, site plan and 8 photos. She read the staff report with recommendation of conditional primary approval contingent on the following:

The agreement between the neighboring owners and petitioner be signed by the Administrative Officer (the Zoning Enforcement Officer) and recorded prior to the issuance of a building permit. Copies of the recorded document must be provided to the Area Plan Commission, the Zoning Enforcement Officer and the County Building Commissioner.

Greg Jacobs, 109 Holden Drive, Brookston, IN, concurred with the staff report. He stated that he has done his best to work with in the guidelines of the Ordinance. He asked for approval. He said that the primary purpose of this request is to allow the ingress/egress of 300 N. to safely access both businesses.

Al Levy stated that the reason for this hearing is for the Board to decide the validity of the request for variance. He said that his office must remain neutral. He explained that if he signed this agreement, he would be giving an approval to the request and that is not a part of his job. He stated that he was neither

in favor nor in opposition of this petition and agreed with any decision the Board makes. He stressed that he would not be signing the document.

Mark Hermodson pointed out that if the Board approves this request the condition attached requires the Zoning Enforcement Officer to sign the document.

Al Levy pointed out that is the recommendation of the staff and it is up to the Board whether they want to require that or not. He reiterated that would destroy the neutrality of his office and usurp the Board authority.

Mark Hermodson questioned what the consequences of approval were.

Jay Seeger stated that if the request is approved with the condition then the only way to obtain a building permit is for the Zoning Enforcement Officer to sign the document.

Al Levy asked if the condition could be amended.

Jean Hall pointed out that the document in question has the wrong date. He asked what effect that would have on the case.

Greg Jacobs stated that he did not know why his wife put on the wrong date.

Sallie Fahey read section 4-9-5 of the UZO in order to explain the origin of the condition. She stated that because there was existing shrubbery, they wanted to ensure that this section was complied with.

Jean Hall asked if the condition could be amended to reflect that was the only issue that the Zoning Enforcement Officer was approving.

Al Levy stated that if the Board decides that they want him to sign it, he will. He stressed that would be setting a dangerous precedent. He reiterated that it was important that the neutrality of the office remain.

Jean Hall stated that Sallie Fahey's concern was just as important.

Al Levy explained that counting the shrubbery is part of his job.

Mark Hermodson asked for clarification that the document was certifying something that Al Levy is already required to do.

Al Levy replied affirmatively. He pointed out that this check was after the fact and he has never had a voice in whether it was right or wrong to grant the variance. He stated that counting the plants is standard.

Jay Seeger stated that the purpose of the condition was to satisfy the planting requirement that refers specifically to the Zoning Enforcement Officer.

Al Levy pointed out that enforcing that section of the UZO was automatic and just part of his job.

Jay Seeger confirmed that it was automatic. He explained that it was to verify that it was done for the purpose of granting the building permit because it is not always done before hand.

Al Levy stated that was correct and he did not think it should be done before hand. He said that granting the building permit was up to the Building Commissioner, not the Zoning Enforcement Officer.

Sallie Fahey explained that the difference with this case is that there is existing shrubbery. She stated that they wanted to ensure that either the Building Commissioner or the Zoning Enforcement Officer agree that the existing plants can be counted for the bufferyard.

Al Levy pointed out that if they grant the request as written, then it is agreed to.

Sallie Fahey pointed out that the Board couldn't usurp the Zoning Enforcement Officer's authority.

Al Levy agreed. He pointed out that if they grant the variance as written, it is approved

Jean Hall stated that he understood the intent of the condition because it was explained to him. He pointed out that the way it is written could cause a misinterpretation. He suggested that the condition be amended.

Sallie Fahey suggested deleting from the condition; "be signed by the Administrative Officer (the Zoning Enforcement Officer)" and the signature line and then obtaining from Al Levy some other document that states the existing plants may be counted.

Al Levy stated that was not his decision. He explained that if the Board approves something it is his job to confirm that it exists.

Jean Hall stated that if the Board says that the existing plants can be counted, then Al Levy would count them.

Al Levy replied affirmatively.

Jay Seeger stated that the option is to amend the condition or remove it entirely.

Sallie Fahey stated that they should want the documents to be recorded.

Jay Seeger agreed that the document should not be removed entirely.

Mark Hermodson said that the suggestion is for the condition to read: "The agreement between the neighboring owners and petitioner be recorded prior to the issuance of a building permit. Copies of the recorded document must be provided to the Area Plan Commission, the Zoning enforcement Officer and the County Building Commissioner."

Jean Hall stated that they would be removing "signed by the Administrative Officer (the Zoning Enforcement)" and ".

Sallie Fahey suggested authorizing Greg Jacobs to remove the Administrative Officer signature line.

Jean Hall questioned whether the entire document could be re done to correct that and the date.

Sallie Fahey question whether the Fullers would re-sign.

Greg Jacobs nodded in agreement that they would.

Jay Seeger stated that the other issue is that the UZO still requires approval by the Administrative Officer.

Sallie Fahey suggested substituting Ron Highland's approval for Al Levy's. She mentioned that the reason the staff suggested Al Levy's approval was because he had been involved in the case.

Greg Jacobs asked if this dilemma was caused by wanting to utilize the existing plants as part of the bufferyard.

Several members replied affirmatively.

Greg Jacobs asked if it could be resolved by not counting them and planting everything new.

Several members replied affirmatively.

Steve Clevenger pointed out that if the variance were approved as per the site plan, it would be up to the Administrative Officer whether the existing plants count towards the bufferyard.

Al Levy stated that was correct, but it would be done after the fact.

Sallie Fahey pointed out that they would want that before the building permits are issued and not after. She stated that Greg Jacobs's solution was the simplest.

Jay Seeger said that the document still had to be signed and recorded before the building permit is issued.

Sallie Fahey stated that the document could be rewritten, deleting the signature line and correcting the dates.

Mark Hermodson recapped the changes to the condition.

Jay Seeger mentioned that the document should also include the legal description of the Fuller's property.

Ralph Webb moved that the conditions be amended as follows:

- "The agreement between the neighboring owners and petitioner be recorded prior to the issuance of a building permit. Copies of the recorded document must be provided to the Area Plan Commission, the Zoning Enforcement Officer and the County Building Commissioner."
- And to add a second condition requiring submittal of a new agreement between the neighboring owners, correcting the dates, including the legal description of the neighbor's property and omitting the section to be signed by the Administrative Officer.

Bruce Junius seconded and the motion carried by voice vote.

The Board voted by ballot 6 to grant -0 to deny thus approving **BZA-1644—GREGORY A. JACOBS**, subject to the conditions as amended.

Mark Hermodson stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

#### **IV. ADMINISTRATIVE MATTERS**

Sallie Fahey introduced Margy Deverall to the Board.

Mark Hermodson updated the Board members on the status for the search for a new Executive Director.

#### **V. ADJOURNMENT**

Ralph Webb moved to adjourn the meeting. Bruce Junius seconded and the motion carried by voice vote.

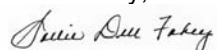
The meeting adjourned at 8:10 P.M.

Respectfully submitted,



Michelle D'Andrea  
Recording Secretary

Reviewed by,



Sallie Dell Fahey  
Assistant Director